

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(26)

OA No. 1424/2005  
TA No.

Date of Decision 16-10-02

Sh. N. K. Verma

...Petitioner (s)

Deep Singh

...Advocate for Petitioner (s)

V E R S U S

UOI & Anr.

...Respondents

Re: Ajinkya Anshulal & Sh.

...Advocate for respondents

P. N. Due;

Coram :-

Hon'ble Shri Govindan S. Tampi, Member (A)  
Hon'ble Shri Shantanu Ray, MEMBER (T)

1. To be referred to the Reporter or not ?

YES

2. Whether it needs to be circulated to  
other Benches of the Tribunal ?

NO

(GOVINDAN S. TAMPI)  
MEMBER (A)

10x202

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1424/2000

New Delhi, this the 16th day of October, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)  
Hon'ble Sh. Shanker Raju, Member (J)

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Sh. N.K.Verma  
S/o Sh. B.M.Verma  
presently working as  
Addl. Director, CPCB  
R/o C-61, City Apartments  
Delhi - 110 096.

...Applicant

(By Adv. Sh. Jog Singh alongwith  
Sh. Balvinder Singh)

Vs.

1. Union of India through  
Secretary, Ministry of Environment & Forest  
Paryavaran Bhawan, C.G.O. Complex  
Lodhi Road, New Delhi.

2. Chairman  
Central Pollution Control Board  
Parivesh Bhawan, East Arjun Nagar  
Delhi - 110 032.

...Respondents

(By Adv. Sh. Rajinder Nishchal  
and Sh. P.N.Puri)

O R D E R

By Sh. Govindan S.Tampi,

This OA challenges the action of the respondents for initiating the process of recruitment for the post of Director in the Central Pollution Control Board (CPCB), against the norms fixed for the Recruitment Rules of 1998 for the post allegedly deny the benefit to the applicant and those similarly placed.

2. Heard S/Sh. Jog Singh, 1d. counsel for the applicant and P.N.Puri along with Sh. Rajinder Nishchal, who appeared for the respondents.

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3. The applicant who is a graduate in Engineering with specialisation in Public Health Engineering joined CPCB as Asstt. Environmental Engineer (AEE). He became Environmental Engineer in 1982, Sr. Environmental Engineer in 1990, Addl. Director on ad-hoc basis in January 1997 and on regular basis from March 1999. He also holds the post of CVO in the organisation. According to him, he was eligible for the above promotion from 1995. Following the advertisement of 20-5-99, inviting the applications for appointment to the post of Director on direct recruitment/deputation basis, the applicant represented on 20-7-2000 that in terms of the Recruitment Rules, the post could be filled by promotion/transfer by deputation failing which only direct recruitment could be resorted to. He also indicated that as he had been working for 23 years in CPCB, his claim for becoming Director should not be overlooked. In CPCB, the number of promotional posts was limited on account of which, the Officers have been stagnating for long and the only higher post which an official for CPCB could aspire for was that of the Director. Two posts of Directors and eight posts of Addl. Directors have been created in CPCB for Environment Surveillance Squad (ESS) under the directions of the Hon'ble Supreme Court and these posts are being sought to be filled up by the CPCB without resorting to the Recruitment Rules. In terms of the Recruitment Rules, the post of Director can be filled up by promotion from amongst those holding the post of Addl. Director with 5 years experience and having Masters Degree or equivalent or Bachelors degree in engineering etc. As out of the two posts,

only one post is to be filled by transfer on deputation, failing which by direct recruitment, direct recruitment can be resorted only in respect of one post. The applicant has been working as the Addl. Director for nearly 3 1/2 years and was also possessing the requisite qualification for the post. CPCB recruitment regulations provided for separate procedure of recruitment to the two streams of Scientific Cadre and the Environmental Engineers Cadre in the ratio of about 40 : 60 %, but posts in the rank of Director and Addl. Director have not been earmarked in the two cadres by maintaining the ratio. This was incorrect and discriminatory and against the interests of the candidate like him. Hence this OA.

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4. Following are the grounds raised in the OA :-

- i) respondents' action in seeking to fill up the post of Director by direct recruitment was against the Recruitment Rules ;
- ii) One out of two posts of Director could have been filled up only from Addl. Directors working with the Department and their cases should have been considered by even making relaxation in qualifying service, if need be ;
- iii) the quota meant for promotion cannot be filled up by direct recruitment ; and

iv) breaking the quota rule was likely to create chaos and has been frowned upon by the Hon'ble Supreme Court.

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5. In view of the above, the applicant seeks following reliefs :-

(a) the portion of the advertisement pertaining to the filling up of the one post of Director through Direct Recruitment be quashed and set aside ;

(b) alternatively the respondents may be directed that the direct recruitment may not be resorted to for a period of one and a half years i.e. till the applicant and similarly situated persons in the organisation become eligible to be considered for promotion to the post in question i.e. Director ;

(c) direct the respondents to initiate afresh the process of filling up the post of Director by way of promotion in accordance with Recruitment Rules, after relaxing the 5 years clause by one or so.

(d) direct the respondents to suitably amend the Recruitment Rules of 1998 and provide for suitable ratio in the posts of Addl. Director and Director, keeping in view the total sanctioned post in question;

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6. During the hearing on admission on 1-8-2000, it was directed by the Tribunal that if the post of Director is filled by direct recruitment, it would be on ad-hoc basis and subject to further orders in this OA.

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7. All the above points were reiterated by Sh. Jog Singh, 1d. counsel for the applicant, during the oral submissions.

8. In the reply on behalf of respondent No.1, the points made by the applicant are rebutted. The post of Director/Addl. Directors in CPCB connected with the work of ESS are to be filled in terms of CPCB regulations, 1998. In terms of the Recruitment Rules, the post of Director can be filled up to 50 % by promotion and 50 % by transfer on deputation, failing which by direct recruitment. Therefore, when promotion and deputation fail, direct recruitment can be resorted to and no violation of recruitment rules has taken place. In this instance, in the absence of anybody eligible for promotion in CPCB, direct recruitment had to be resorted to. The applicant did not have the requisite period of five years service for promotion. The applicant's appointment as Addl. Director even on ad-hoc basis was done without the approval of the Govt. and was, therefore, not regular. His experience as Addl. Director only counts from 15-3-99 when he was appointed formally. Therefore, he had only 1 1/2 years of service. The applicant's allegation that there was a imbalance in the allocation of post between Scientific Environmental Cadre, had no basis. The Selection

Committee had considered the applicant for the post of Director, both on deputation basis and as on direct recruitment basis and the result was yet to be announced. The respondents reiterate that recruitment by promotion has failed, as no Addl. Director with 5 years experience was available and no relaxation in the matter of educational experience or age was provided for. Further, the applicant himself was a candidate for the post of Director on direct recruitment basis and was called for the interview on 24-7-2000 which he did not attend. He has also taken unduly long time for appear before the Tribunal. On behalf of respondent No.2, it is denied that direct recruitment can be resorted only when the process of transfer on deputation fails as the rules provided for direct recruitment when the process of promotion also failed. The applicant infact had been promoted on ad-hoc basis in the quota of transfer on deputation on the basis of the decision of the CPCB. The Board had proposed for filling up one post of Director by promoting a Sr. Scientist/Sr. Environmental Engineer with 10 years of service which was not agreed to by the Administrative Ministry, as two jumps could not be allowed to a person for promotion. It was in the circumstances that the advertisement was placed in the Newspapers. According to the respondents, the post of Addl. Director was filled up w.e.f. 15-3-99 which benefited the applicant also and there was no provision for giving promotion retrospectively and ad-hoc promotions granted earlier cannot be considered for regularising the service. There has neither been any mala-fides nor irregularity and arbitrariness in the Deptt's action, as the applicant himself was

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promoted for the post of Addl. Director once the new Rules were notified. It was only on account of the fact that no candidate was available for the post of Director in the Deptt. that the advertisement was initiated. The applicant did not have the requisite experience for being considered for the post of Director, though he has been working for 23 years in the Organisation. The post of Director was specially created under the directions of Hon'ble Supreme Court and it had to be filled immediately. No eligible persons in the cadre of Addl. Director was available for promotion and, therefore, the direct recruitment had to be resorted to. The respondents reiterate that direct recruitment can be resorted to when either promotion or deputation by transfer fails and it was the position in this case. The applicant cannot, therefore, complain, as he was not amongst the eligible candidates. He was an ad-hoc Addl. Director from 1-1-97 and was granted the regular promotion only on 15-3-99. Therefore, he could not claim the right for consideration for promotion. Respondents reiterate that no imbalance between Cadres of Scientist or Environmental Engineers <sup>exist</sup> ~~exists~~ and both have been <sup>granted</sup> ~~granted~~ adequate chances of promotion when they put in the requisite amount of service. Further, the Selection Committee which met on 24-7-2000 had called the applicant for the interview for the post of Director on direct recruitment basis but he had declined to appear. Recruitment by promotion had failed as there was none in the CPCB with the requisite experience of five years for promotion as

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Director. Thus both the modes of promotion and on transfer by deputation having failed direct recruitment was the only proposition available.

9. Both the counsel reiterated the respective points made by them in the written pleadings.

(BA)

10. In the written submissions, filed on behalf of the applicant, it is pointed out that the advertisement issued by the Deptt. was on wrong premises as the applicant and three others were working as Addl. Directors since January 1997. Though regularised in March 1999, they were eligible for promotion to the post of Director, which was not done. Similarly only in the case of transfer by deputation, the failure to fill up should be followed by direct recruitment. The applicant's ad-hoc service as Addl. Director should have been considered for the purpose of seniority in view of the Hon'ble Supreme Court's decision in Rudra Kr. Sen & Ors. Vs. UOI & Ors. (2000 SCC (L&S) 1055). He relied upon the decision of the Hon'ble Supreme Court in the case of UOI & Ors. Vs. Tushar Ranjan Mohanty & Ors. (1994 (5) SCC 450). In view of the above, the applicant's case should succeed, is what he says.

11. We have carefully considered and perused the documents brought on record. In this OA, the applicant who is working as Addl. Director in CPCB is aggrieved that the respondents have resorted to advertise the post of Director which should have been filled up by promotion and that he was not considered for the same even relaxing the requisite period.

12. Perusal of the relevant advertisement shows that one post of Director (direct recruitment) and one post of Director (deputation) have been advertised. Relevant portion of the advertisement reads as below :-

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"(1) These regulations may be called the Central Pollution Control Board (Method of Recruitment, Terms and Conditions of Service of Officers and other Employees other than Members Secretary) (Amendment) Regulations, 1998."

Column 10 :- Method of Recruitment : Whether by Direct recruitment or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by various methods.

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50 % by promotion & 50 % by transfer on deputation failing which by direct recruitment."

The above would mean that the respondents have retained with them the power to resort to direct recruitment in cases when promotion as well as recruitment by transfer on deputation fails to result in the selection of candidates. The applicant's plea that direct recruitment can be resorted only in the

case of failure of transfer on deputation and does not cover the case of promotion, has no sanction in law, as the Recruitment Rule is specific and the expression failing which by direct recruitment applies to both cases. Respondents have placed before before us the necessary records, the perusal of which shows that they had resorted to direct recruitment only on finding that both modes for selection i.e. promotion and transfer by deputation had failed. The vacancy to be filled for promotion could not be so filled up as no Addl. Director had the requisite period of service of five years at the time of selection. Admittedly the applicant has been appointed regularly as a Addl. Director only in March 1999, though he has been working in the said post on ad-hoc basis from 1997. According to him this period also should have been taken into consideration for reckoning his service as there was no break and he has been continuing uninterruptedly as Addl. Director. The applicant had referred to few decisions of the Hon'ble Supreme Court including that of UOI Vs. Rudra Kr. Sen (supra) which do not, however, come to his assistance. While he did have an uninterrupted run of 2 1/2 years before his regularisation, it has been brought on record that the promotion was only a stop gap arrangement and had not been granted the promotion on the basis of full consultation procedure, as required. He cannot, therefore, in law, get the benefit of those two years of service. Even if that was also taken in to consideration, which could not have been, the applicant would still have failed to complete eligibility period of 5 years, which is the requirement under the Recruitment Rules for consideration for

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promotion. Respondents could not have been expected in law to keep the posts unfilled till the applicant and similarly placed individuals completed the requisite period and became eligible for consideration as the operation of ESS could not have waited indefinitely in view of the Hon'ble Supreme Court's directions. Therefore, the respondents' action in calling for the candidates from the open market could not be assailed.

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13. We do appreciate it is a bit harsh that someone like the applicant who has been working in the organisation for long and was looking forward to an elevation has been denied the same by the above. The situation, however, cannot be helped in view of the settled position in law.

14. In view of the above, in our view, the applicant has not made out any case for our interference in law. OA, therefore, fails and is accordingly dismissed.

*S. Raju*

(SHANKER RAJU)  
MEMBER (J)

/vksn/

*(Govindan S. Tampi)*  
(GOVINDAN S. TAMPI)  
MEMBER (A)